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IN THE

Supreme Court of the United States

March Term, 1958

No. 818

GEORGE BLUMENFELD,

Petitioner,

v.

BENJAMIN HARRIS, HARRY HARRIS and SAMUEL HARRIS, individually and as co-partners doing business under the firm name and style of HARRIS BROTHERS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF BRONX

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No.

GEORGE BLUMENFELD,

Petitioner,

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BENJAMIN HARRIS, HARRY HARRIS and SAMUEL HARRIS, individually and as co-partners doing business under the firm name and style of HARRIS BROTHERS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF BRONX

Petitioner prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of New York, Bronx County, entered December 2, 1957 upon the order of the Court of Appeals for the State of New York affirming the judgment of the Supreme Court of the State of New York, Bronx County, entered April 15, 1957 upon the order of the Appellate Division, First Department, of the Supreme Court of the State of New York, reversing a judgment of the Supreme Court of the State of New York, Bronx County, entered July 3, 1956, after trial by Flynn, J. at Trial Term, in favor of petitioner (plaintiff below) for $2,500 as damages for false imprisonment, and for $780, with interest from December 11, 1951, as recovery of money paid under coercion and duress.

Opinions Below

Opinion at Trial Term (Flynn, J.), Supreme Court of the State of New York is unreported but set forth in Appendix, *infra*, pp. 11-13.

Opinion of reversal by Appellate Division, First Department, Supreme Court of the State of New York, is reported at 3 App. Div. 2nd, 219; 159 N. Y. S. 2nd, 561; and is set forth in Appendix, *infra*, pp. 14-15.

The Court of Appeals for the State of New York rendered no opinion; its affirmance of the Appellate Division is reported at 3 N. Y. 2nd, 905; 167 N. Y. S. 2nd, 925; its denial of petitioner's motion for reargument and amendment of remittiture is as yet unreported.

Jurisdiction

Judgment of the Supreme Court of the State of New York, Bronx County, was entered December 2, 1957 upon the order of the Court of Appeals affirming the judgment of reversal entered April 15, 1957 upon order of the Appellate Division (Record, folios 265-270). Copies of both judgments are appended to this petition.

Jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3) and Rules of the Supreme Court of the United States, Rule 19.

Questions Presented

1. Did the Court of Appeals deprive petitioner of equal protection of the law, and of his right to due process as guaranteed by the U. S. Constitution?

II. Were the federal issues preserved below on reargument?

III. Can the United States Supreme Court assume jurisdiction?

Citations

Fiske v. Kansas, 274 U. S. 380
Great Northern Ry Co. v. Sunburst Oil etc., 287 U. S. 77
Malinski v. People of the State of New York, 324 U. S. 401

New York Statutes and Cases Involved

Action for False Imprisonment

Arrest, freedom from N. Y. State Constitution, Art. I. Sec. 11

Arrest, manner

N. Y. Code of Criminal Procedure, sec. 177, 183

Arrest, unwarranted

Grago v. Vassello, 173 N. Y. 736, 738
Byrne v. Matthews, 109 N. Y. 662
Gold v. Armer, 140 App. Div. 73, 75
Gearity v. Strasbourger, 133 App. Div. 701
Gelles v. Rosenbaum, 141 Misc. 588

Detention, involuntary

Vernes v. Phillips, 266 N. Y. 298
McLoughlin v. N. Y. Edison, 252 N. Y. 202
Reese v. Julia, etc., 260 App. Div. 263
Egleston v. Scheibel, 113 App. Div. 798
Emmerich v. Thorley, 35 App. Div. 452

Detention, unjustified

Snead v. Bonnoil, 166 N. Y. 325
Seguin v. Meyers, 279 App. Div. 690
Wallenstein v. Rosenbaum, 241 App. Div. 374
Stevens v. O'Neill, 51 App. Div. 364
Bass v. State, 196 Misc. 177

Detention, illegal ab initio after abandonment of purpose of arrest

Jones v. Freeman's Dairy, 283 App. Div. 667

Good faith, lack of malice, no defense

Sanders v. Rolnick, 272 App. Div. 803, affirming 186 Misc. 740
Vallon v. Ramage, 196 Misc. 740
Damilitis v. Kerjas, etc., 165 Misc. 186

Justification, burden of proof as to

Morgan v. N. Y. Central, 256 App. Div. 177
Rodney v. I. R. T., 149 Misc. 271

Damages, determination of

Nastasi v. State, 300 N. Y. 473, affirming 275 App. Div. 524, rev'g 194 Misc. 49
Walker v. Lord & Taylor, 236 App. Div. 111
Goldberg v. Fleischer's, etc., 102 N. Y. S. 2d 176

Extortion, public policy

N. Y. Penal Law, Section 851
People v. Fichtner, 281 App. Div. 159, affirmed 305 N. Y. 864

Money paid under coercion and duress, recovery allowed

Adams v. Irving Nat. Bank, 116 N. Y. 606
Schoener v. Lissauer, 107 N. Y. 111, reversing 36 Hun 100
Foshay v. Ferguson, 5 Hill 154
Arey v. Town of Brant, 263 N. Y. 320
Deshong v. City of N. Y., 176 N. Y. 475, affirming 74 App. Div. 234

Trial judge's findings, when upheld

Amend v. Hurley, 293 N. Y. 587
Boyd v. Boyd, 252 N. Y. 422

Statement

Petitioner, employee, brought action against respondents, employers, for damages for false imprisonment and for return of money he paid them under coercion and duress. On December 11, 1951 petitioner was detained in a closed rear room of respondents' grocery store where one of the respondents and their private detective accused petitioner of larceny and threatened him with police arrest unless he paid respondents $780 and made a confession of the charges. Petitioner, despite his denials and protests of innocence was detained for about a half hour during which time the threats were repeated. In fear of the threats and in order to avoid the shame and humiliation consequent upon the threatened police arrest, petitioner made the "confession" and paid the $780.

The respondents failed to testify at all. The testimony of their private detective was held by the trial judge to be palpably incredible. He held the testimony of petitioner credible and decided for petitioner, awarding him $2,500 for the illegal detention, and the recovery of $780 with interest as money paid under coercion and duress.

The Appellate Division reversed the judgment, dismissed the complaint and stated that the threats were the sole reason why petitioner remained in the room and paid the $780 to respondents; and that such threats could not support an action for false imprisonment or an action to recover money paid under coercion and duress.

On appeal to the Court of Appeals petitioner argued that the substantial credible evidence adduced at trial and the pertinent law supported the trial judge's decision; that the employer failed to justify their illegal detention, duress and coercion of petitioner. The Court of Appeals affirmed without opinion.

Petitioner then noticed a motion for reargument or, in the alternative, for amendment of the remittitur, and raised the federal questions set forth in the moving brief. This motion was denied without opinion, by order of the Court of Appeals entered December 5, 1957.

The petitioner in the Court of Appeals argued that the affirmance by that Court constituted a denial to petitioner of his rights to equal protection under the law, a deprivation of his property without due process of law and a negation of the statute and public policy condemnatory of extortion; and, also, that the Court of Appeals' decision constituted an open invitation to the practice of blackmail. N. Y. Penal Law, Section 851, states what threats constitute extortion,

"Fear, such as will constitute extortion, may be induced by an oral or written threat:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or to any member of his family or to a corporation of which he shall be an officer, stockholder, employee or agent; or

2. To accuse him, or any relative of his or any member of his family, of any crime; or

3. . . . (not relevant) . . .

4. To expose any secret affecting him or any of them; or

5. . . . (not relevant) . . .

6. . . . (not relevant) . . .

As the statute is so explicit, and as the Court of Appeals gave no opinion, it is impossible to understand the reasons underlying the affirmance. On trial the petitioner established the fact of his detention and the threats; and the respondents conceded the threats. Even the Appellate Division's decision accepts the existence of the threats. The harm occasioned by the affirmance grows out of the refusal by the Court of Appeals to apply the statutory restriction against blackmail to an analagous civil tort, and thus bring the ruling in this case in line with public policy. More importantly it accomplishes an indirect subversion by the judiciary of the legislative enactments designed to protect the people at large from blackmail.

Reasons for Granting the Writ

The Court of Appeals' affirmance of the Appellate Division reversal silently memorialized this case as authority for violation of the constitational guarantees of freedom from illegal arrest, and empowered wrongdoers to practice extortion and blackmail without hindrance. More cogently, by refusing to apply the historical line of cases to the circumstances established at trial, and found in substance by the Appellate Division, the Court of Appeals abdicated its duties as a final court of correction of errors. It is most certainly not necessary to ply the Supreme Court of the United States with case and point to illustrate the danger lying in the path of such a course. At pages 3, 4, 5 in this petition are cases illustrative of the policy heretofore adhered to for the protection of the public in the State of New York. These decisions were made on facts more than embraced in the two causes of action established by petitioner on trial and on appeal. By refusing to apply the rules of these cases to the facts proved at trial, the Court of Appeals shut its eyes to the rights of petitioner to be equally protected under the law from the evils of illegal arrest and extortion. The plain effect of this decision by the Court of Appeals is to say that the conduct which is declared criminal and reprehensible under the N. Y. Penal Law, and proscribed by an unbroken line of cases, shall be encouraged. This negation of the rights of petitioner and of the public is also a violation of the limitations placed upon the judiciary not to encroach upon or disturb that area of government constitutionally confined to the legislature.

It is, respecting the entire course of the New York appeals in this case, emphatically urged that the petitioner has been deprived of fundamental rights secured to him by the federal constitution to such an extent that, the Supreme Court of the United States should make an independent examination of the facts.

Most certainly the Supreme Court is not bound to accept the findings of fact made by the Appellate Division and approved by the Court of Appeals. In the exercise of its function as the final protector of the constitutional rights guaranteed under the constitution, the Supreme Court has a particular duty to test the facts as shown by the record against the law, and then, independentiy determine whether or not due process and equal protection of the laws were denied petitioner in the Court of Appeals (*Fiske* v. *State of Kansas*, 274 U. S. 380).

In the case at bar, there is not the slightest evidence in the record to support the reversal of the trial court, and by refusing to apply the extant statutory and decisional law, the Court of Appeals denied petitioner his constitutional rights of equal protection under the law and due process, and the Supreme Court can properly review the facts in order to evaluate them as they bear on the federal questions raised by petitioner. It is regarded as necessary that the United States Supreme Court judicially review the entire proceeding in this case to ascertain whether the ideas instinct in the American judicial process have been offended (*Malinski* v. *People of the State of N. Y.*, 324 U. S. 401).

It may be stated, in consideration of the raising of the federal issues for the first time on the motion for reargu-

ment, that the constitutional questions arose from the unexpected refusal of the Court of Appeals to grant validity to the statutory and decisional laws of the State of New York as referable to the case at bar. And petitioner's petition for review by writ was made timely within the meaning of the decision in *Great Northern Railway Co.* v. *Sunburst Oil and Refining Co.*, 287 U. S. 77.

Conclusion

The implications of this case concern not only the petitioner, and the violation of his constitutional guarantees of due process and equal protection, but also constitute an instance in which the highest court of a state has undertaken to disregard the public policy of the state as expressed by the legislative enactment in the form of a Penal Law, and also as expressed in a long and respected line of cases, thereby encroaching upon and disturbing a branch of government heretofore constitutionally reserved to the legislature.

WHEREFORE, petitioner respectfully prays that a Writ of Certiorari be issued, and that this Court reverse the court below, and reinstate the original judgment of the Supreme Court of the State of New York, Bronx County, entered on July 3, 1956, inasmuch as the decisions of the Court of Appeals in affirmance of the Appellate Division were in error, for any other and further relief as this Court may deem just and proper.

GEORGE BLUMENFELD,
by FREDERICK POSSES,
Counsel for Petitioner.

Dated: New York, N. Y., February 24, 1958.

APPENDIX

Opinion of Trial Term, Supreme Court of the State of New York, County of Bronx

Plaintiff pleads two causes of action, the first for damages for his alleged false arrest and the second for the sum of $780 alleged to have been paid by him to the defendants under compulsion.

The plaintiff had been in the employ of the defendants as a manager of a grocery store, on December 11, 1951, for approximately one year. At 10:30 on that day he sold a can of salmon to an agent of a private protective system engaged by the defendants.

Shortly thereafter he was confronted by a private detective and the defendant Benjamin Harris and taken to a rear room of the store premises. He was threatened by the defendant and the private detective with police arrest unless he signed a written confession dictated by the private detective that he had stolen over the period of his employment the total sum of $780.

Plaintiff has testified that he signed the confession and suffered the detention in immediate fear as a result of serious threats to have him arrested by falsely charging him with larceny.

Among his routine duties was the keeping of books and records of the business and payment of his salary and that of the clerk. He also made other disbursements to creditors in the regular course of his employment.

Under fear of the threatened arrest, he withdrew $780 from his bank account and delivered it to the defendants on the same day, pursuant to a prior arrangement demanded by them. He was immediately dismissed.

I find, as a fact, that the plaintiff was unlawfully detained. It is sufficient that if the arrested person understands he is under restraint, or in custody, and his freedom of motion is restrained, that constitutes the tort of false arrest.

The defendants have not met their burden of showing justification of this unlawful detention. The evidence presented by them was palpably incredible and unbelievable. They failed to call Benjamin Harris.

The $780 paid by the plaintiff to Benjamin Harris was induced by threats and the weight of superior authority backed up by private detectives.

The plaintiff has sustained this burden of proof by credible evidence. The defendant has presented no credible evidence to justify his demand for this money and his retention of it.

Judgment is directed for the plaintiff on the first cause of action for $2,500 and on the second cause of action for $780 with interest thereon from December 11, 1951.

The foregoing will constitute the decision of this Court pursuant to Section 440 of the Civil Practice Act.

Mr. Horkitz: If it please the Court, may I be heard for a moment?

The Court: Certainly.

Opinion of Trial Term, Supreme Court of the State of New York, County of Bronx

Mr. Horkitz: I would like to move at this time to move to reopen the proof to put in the testimony of Mr. Benjamin Harris. He was present in the courtroom and I did not put him on the stand because he is a very sick man, suffering from high blood pressure and other conditions and in view of the general attitude prevailing in the courtroom at the time when the defendant rested, I did not want to submit Mr. Harris to being on the stand but I have him here and I would be glad to put him on the stand if your Honor would grant me that favor.

The Court: You had the opportunity to call him at the proper time and you chose not to do that and I have taken that into consideration in deciding the case against you on both counts.

Motion is denied.

Opinion of the Appellate Division, First Department of the Supreme Court of the State of New York

Appeal from judgment of the Supreme Court at Trial Term (Flynn, J.) entered July 3, 1956 in Bronx County Clerk's office in favor of plaintiff for $3,492.81.

Robert L. Horkitz, of counsel (Glatzer, Glatzer & Diamond, attorneys) for Defendants-Appellants.

PER CURIAM:

The trial court, sitting without a jury, rendered judgment in favor of plaintiff on each of two causes of action. The first cause alleged false imprisonment, and the second cause sought the return of money paid to defendants under duress and coercion. It is clear that plaintiff, an employee of defendants, entered the back room of the store in which he claims he was detained unlawfully freely and voluntarily, and in the course of his regular duties. It is just as clear, and reiterated by plaintiff many times without reservation in the course of his testimony, that the only reason he did not leave this back room was because he feared that if he did so defendants would call a policeman and have him arrested for allegedly pocketing sales receipts. The same fear, plaintiff testified unequivocally, impelled him to pay over to defendants by way of restitution the estimated total of his alleged peculations.

There can be no doubt that plaintiff chose to remain in the back room of defendants' store to discuss the charges made against him, and that he signed two confessions while in the back room, under no restraint other than that if he left the room he risked the indignity and consequences of an arrest. Threats to invoke peacefully the processes of the law, standing alone and unaccompanied by force or

any other form of restraint, cannot result in such a detention as would constitute false imprisonment (*Harris* v. *New York, Westchester & Boston Ry. Co.*, 244 App. Div. 252; nor can threats to enforce what defendants thought were their legal rights, standing by themselves, support an action for moneys paid under duress and coercion (*Avey* v. *Town of Brant*, 263 N. Y. 320). The judgment appealed from is unanimously reversed and the complaint dismissed. ALL CONCUR.

Judgment Entered on Trial Term Decision

GEORGE BLUMENFELD,

Plaintiff,

against

BENJAMIN HARRIS, HARRY HARRIS and SAMUEL HARRIS, individually and as copartners doing business under the firm name and style of HARRIS BROTHERS,

Defendants.

Plaintiff's Address: 1324 Teller Avenue, Bronx, N. Y.
Defendants' Address 100 Bronx Terminal Market, N. Y.

The issues in this action having been duly brought on for trial before Mr. Justice John L. Flynn, without a jury, pursuant to stipulation of the parties in open court, at a Trial Term, Part VI of this Court held at the County Court House in the City of New York, County of Bronx, on the 28th day of June, 1956, and plaintiff having appeared by Frederick Posses, his attorney, and defendants having appeared by Glatzer, Glatzer & Diamond, their attorneys, and the allegations and proofs of the parties having been duly heard, and the issues having been duly tried, and the Court having duly made and filed its decision herein containing a statement of the facts found and directing judgments against the defendants as hereinafter stated,

Now, on motion of Frederick Posses, attorney for plaintiff, it is

Judgment Entered on Trial Term Decision

ADJUDGED, that plaintiff recover of defendants on plaintiff's first cause of action the sum of $2,500.00 and that plaintiff recover of defendants on plaintiff's second cause of action the sum of $780.00, with interest from December 11, 1951, in the sum of $212.81, making in all the sum of $3,492.81, and have execution therefor. Thirty days stay and sixty days to make a case. Let judgment be entered accordingly.

Dated: July 3, 1956.

JOHN J. HANLEY,
Clerk.

Judgment Entered on Appellate Division Reversal

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX

GEORGE BLUMENFELD,

Plaintiff,

against

BENJAMIN HARRIS, HARRY HARRIS and SAMUEL HARRIS, individually and as copartners doing business under the firm name and style of HARRIS BROTHERS,

Defendants.

The above-named defendants, Benjamin Harris, Harry Harris and Samuel Harris, individually and as co-partners doing business under the firm name and style of Harris Brothers, having appealed to the Appellate Division of the Supreme Court, in and for the First Judicial Department, from the judgment of the Supreme Court, Bronx County, entered in the office of the Clerk of the County of Bronx on the 3rd day of July, 1956; and the said appeal having been duly heard; and the said Appellate Division having thereupon by its order dated March 8, 1957, ordered and adjudged that the said judgment so appealed from be reversed on the law and the facts, with costs to the appellants and the complaint dismissed with costs to the defendants; and the remittitur and a certified copy of said order of reversal having been duly filed in the office of the Clerk of the

Judgment Entered on Appellate Division Reversal

County of Bronx; and the costs of the action and of the appeal having been duly taxed by the Clerk at the sum of $602.56

Now, on motion of Glatzer, Glatzer & Diamond, attorneys for the said defendants, it is hereby

ADJUDGED that the said judgment of the Court herein entered in the office of the Clerk of the County of Bronx on July 3, 1956, be and the same is hereby reversed upon the law and the facts; and it is further

ADJUDGED that the plaintiff's complaint herein be and the same hereby is dismissed, with costs to the defendants, and it is further

ADJUDGED that the defendants, Benjamin Harris, Harry Harris, and Samuel Harris, individually and as co-partners doing business under the firm name and style of Harris Brothers, 201 Bronx Terminal Market, recover of the plaintiff George Blumenfeld, residing at 1941 Walton Avenue, Bronx, New York, the sum of $602.56 costs and disbursements of the action and of the appeal, as taxed; and that the defendants have executed therefor.

Dated: April 15, 1957.

/s/ JOHN J. HANLEY,
Clerk.

[Seal]

Judgment Entered on Court of Appeals Affirmance

SUPREME COURT

COUNTY OF BRONX

GEORGE BLUMENFELD,

Plaintiff,

against

BENJAMIN HARRIS, HARRY HARRIS and SAMUEL HARRIS, individually and as co-partners doing business under the firm name and style of HARRIS BROTHERS,

Defendants.

The above named plaintiff having appealed to the Court of Appeals of the State of New York from the judgment of reversal of this Court entered upon the order of the Appellate Division of the Supreme Court, First Department, in the office of the Clerk of the County of Bronx, on the 15th day of April, 1957, reversing the judgment in favor of the plaintiff and against the defendants heretofore entered herein in the office of the said Clerk on the 3rd day of July, 1956, granting judgment in favor of the defendants and against the plaintiff in the sum of $602.56, and from each and every part of said judgment of reversal as well as from the whole thereof; and the said appeal having been duly argued at the said Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the said judgment so appealed from as

aforesaid be affirmed, and judgment entered for the defendants, with costs, and having ordered and adjudged that the proceedings therein be remitted to this Supreme Court there to be proceeded upon according to law; and the remittitur from the said Court of Appeals having been filed herein; and the order having been entered herein making the order and judgment of the said Court of Appeals the order and judgment of this Court;

Now on motion of Glatzer, Glatzer & Diamond attorneys for the defendants herein, it is hereby

ADJUDGED that the judgment appealed from and entered herein on the 15th day of April, 1957 be, and the same hereby is affirmed, and it is hereby further

ADJUDGED that the defendants recover of the plaintiff the sum of $136.35 costs as taxed, and that the defendants have execution therefor.

Judgment signed and entered this 2nd day of Dec. 1957

/s/ JOHN J. HANLEY
Clerk

Notice of Motion for Reargument in Court of Appeals, Raising Federal Questions

COURT OF APPEALS OF THE STATE OF NEW YORK

GEORGE BLUMENFELD,

Plaintiff-Appellant,

against

BENJAMIN HARRIS, HARRY HARRIS and SAMUEL HARRIS, individually and as co-partners doing business under the firm name and style of HARRIS BROTHERS,

Defendants-Respondents.

Sirs:

PLEASE TAKE NOTICE that upon the annexed brief and upon all the papers upon which the appeal in the above-entitled action was heard and decided by this Court, to wit: the case on appeal and the briefs of the parties, and upon the remittitur of this Court filed with the Clerk of the County of Bronx on the 27th day of October 1957, by which it appears that this Court affirmed the judgment of the Appellate Division, First Department, from which this appeal was taken, and on all the proceedings heretofore had herein, the undersigned will move this Court at a Term thereof to be held at the Court of Appeals Hall, Pine and Eagle Streets, Albany, New York, on the 2nd day of December, 1957, at two o'clock in the afternoon of that day.

Notice of Motion for Reargument in Court of Appeals. Raising Federal Questions

for an order granting leave to the plaintiff-appellant to reargue the appeal herein, or, in the alternative, for an order amending the remittitur in this action to state the grounds of the decision of this Court in order to remove uncertainty and make it appear to the Supreme Court of the United States upon application for a writ of certiorari whether or not a federal question was necessarily decided, and that the Clerk of the County of Bronx be directed to return to the Court of Appeals the remittitur now on file in his office for the purposes aforesaid, and for such other and further relief as may be just and proper in the premises.

Dated: New York, N. Y., November 13, 1957

Yours, etc.,

FREDERICK POSSES
Attorney for Plaintiff-Appellant
Office & P. O. Address
258 Broadway
New York 7, N. Y.

To:

GLATZER, GLATZER & DIAMOND, ESQS.
Attorneys for Defendants-Respondents

Supporting Brief

COURT OF APPEALS

OF THE STATE OF NEW YORK

GEORGE BLUMENFELD,

Plaintiff-Appellant,

against

BENJAMIN HARRIS, HARRY HARRIS and SAMUEL HARRIS, individually and as co-partners doing business under the firm name and style of HARRIS BROTHERS,

Defendants-Respondents.

PLAINTIFF-APPELLANT'S BRIEF

Statement

Plaintiff moves for leave to re-argue his appeal to this Court from a judgment of the Appellate Division, First Department, which dismissed his complaint with costs and reversed a judgment of the Supreme Court, Bronx County, in favor of plaintiff entered after trial at Trial Term, before Mr. Justice J. L. Flynn without a jury, whereunder plaintiff recovered $2,500 damages for false imprisonment and $780, with interest as money paid under coercion and duress. This Court, without opinion, affirmed the Appellate Division.

Supporting Brief

The Grounds for This Motion

I. On the facts presented in the case on appeal and counsel's brief, this Court's decision is in conflict with and overlooks the following controlling cases duly submitted on the issue of false imprisonment: *McLoughlin* v. *New York Edison Co.*, 252 N. Y. 204; *Snead* v. *Bannoil*, 166 N. Y. 325; *Stevens* v. *O'Neill*, 51 App. Div. 364. The Case on Appeal shows that plaintiff was in a locked room on the premises of defendants' store; that they were his employers; that one of them and a hired private detective were alone in the room with plaintiff whom they threatened with police arrest if he would not accede to their demands for the payment of a sum of money and the making of a written confession; that plaintiff feared that the threats would be executed, and, in submission to the employer and detective, he yielded to their demands. Under those circumstances, the *McLoughlin* case is controlling. It holds that false imprisonment is made out where there is a *show of force* sufficient to dominate the situation so that the person seeing the force displayed yields thereto. Also controlling is the *Stevens* case which held that a person is improperly restrained and under the dominion of private detectives who accuse him of larceny in circumstances where, as in the case at bar, he has no choice but to yield; and such a person is not under the duty of offering any resistance to the detectives or to try to escape at his risk. In the *Snead* case, the ruling was made that such illegal detainer without justification makes the actors liable. The case on appeal shows on its face that apart from the extorted writing, defendants had not even the appearance of any justification for their

conduct; the writing was repudiated by the plaintiff both before and at trial, and plaintiff's testimony was credited by the trial court, whilst that of defendant's witness was held incredible.

The Appellate Division reversal rested on a misapprehension, as does the affirming decision of this Court, that the facts in the case cited for the defendants, *Harris* v. *N. Y. W. B. Railway*, 244 App. Div. 252 are pertinent. They are clearly distinguishable from the case at bar, and fall without the ambit of the *McLoughlin* and *Stevens* cases, because in the *Harris* case there was no superior authority of a private detective or an employer; the acts complained of took place in a public railroad station from which the threatened person could flee or to which he could summon help; there was no dominion by the railway boxman over the passenger either by authority, circumstance or employment. In the cited *Harris* case the mere threat by the boxman to call a policeman cannot be equated to the *genuine display of force* to which plaintiff in the case on appeal was subjected. Indeed when the case on appeal was tried, the trial judge had the best opportunity of discovering the existence of dominion over and restraint of the plaintiff; and, he having found such dominion and restraint to be substantially supported by the record, it was error for the Appellate Division to disregard the controlling decisions in *Amend* v. *Hurley*, 293 N. Y. 587 and *Boyd* v. *Boyd*, 252 N. Y. 422, which rule that a trial judge's findings, amply supported by the record should not be disturbed on appeal; these cases were duly presented to this Court which overlooked them in affirming the Appellate Division.

II. The Court's decision is in conflict with and overlooks the parallel and controlling case of *People* v. *Fichtner*, 281 App. Div. 159, aff'd 305 N. Y. 864, duly submitted by counsel, wherein it was held *contra* public policy to permit the use of fear induced by threats to accuse a debtor of crime as a means for collecting money. The case on appeal, ff. 83, 125, contains clear admissions that defendants threatened plaintiff with arrest, and that the payment by him to defendants of $780 was pursuant to such threats. Such threats are not only reprehensible to the public policy of our state set forth in the line of decisions from *Foshay* v. *Ferguson*, 5 Hill 154; but they are illegal under the extortion statute, Penal Law 851 which defines defendants' acts as a clear crime. Under the controlling decision of *Schoener* v. *Lissauer*, 107 N. Y. 111, and again at *Adams* v. *Irving Nat. Bank*, 116 N. Y. 606, duly submitted by counsel, plaintiff was allowed recovery of money which had been obtained under duress, the elements of which were less stringent than in the case on appeal.

This Court may have been misled by defendant's brief which cited *Avery* v. *Town of Brant*, 263 N. Y. 329, *but* omitted to state that the decisions in that case was that payments coerced by duress may be recovered where the coercion is illegal, unjust or oppressive, as in the case on appeal.

III. The Court's decision of affirmance constitutes a denial to plaintiff of his rights to equal protection under the laws of this state, a deprivation of his property without due process of law guaranteed by the Federal constitution, and a negation of the express statute and public policy against acts of extortion, and a *carte blanche* for blackmail.

IV. The Court overlooked the decisive questions of this case, in the case on appeal and brief questions of this case, implicit in the case on appeal and brief of counsel:

1. Can defendants by their admitted use of threats to procure payment of money from plaintiff subvert the decleared public policy and law of this state against extortion?

2. Can defendants be chargeable with false imprisonment if they have *displayed force,* under the circumstances appearing in the case on appeal in which the plaintiff is subject to their domination, and from which he cannot escape except at some incalculable risk to himself?

3. Can defendants arrogate to themselves the police authority of arrest without justification being explicitly proved?

Conclusion

The case on appeal and brief of counsel duly submitted controlling decisions and questions of such general interest on the issues of false imprisonment and duress in violation of the public policy and statute of this state, and of the plaintiff's rights under the state and federal constitution, that the motion by plaintiff for leave to reargue his appeal should be granted.

Respectfully submitted,

Frederick Posses,
Attorney for Plaintiff-Appellant.

Order of Court of Appeals Denying Motion for Reargument and Amendment of Remittitur

STATE OF NEW YORK,

In Court of Appeals

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the fifth day of December A. D. 1957.

Present:

HON. ALBERT CONWAY, *Chief Judge, presiding.*

GEORGE BLUMENFELD,

Appellant,

vs.

BENJAMIN HARRIS, & ors., individualy and as co-partners doing business under the firm name and style of HARRIS BROTHERS,

Respondent.

A motion for reargument or, in the alternative, to amend the remittitur in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied with ten dollars costs.

/s GEARON KIMBALL,
Deputy Clerk.

SEAL OF COURT